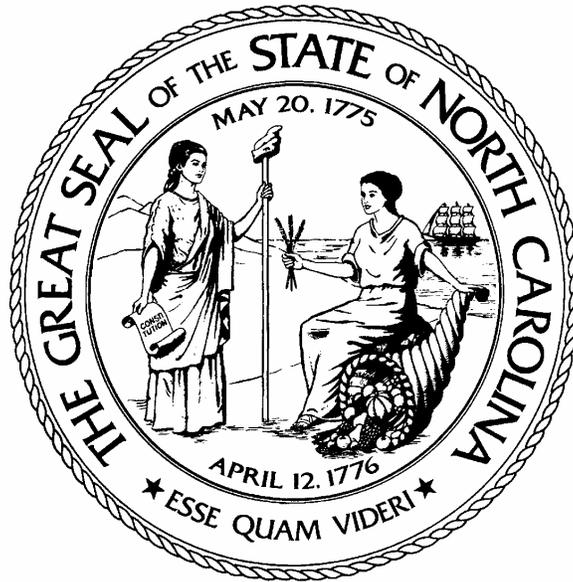


**COMMISSION ON CHILDREN
WITH SPECIAL NEEDS**



REPORT TO THE GOVERNOR AND THE 2001 SESSION
OF THE 2000 GENERAL ASSEMBLY
OF NORTH CAROLINA

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**CHILDREN WITH SPECIAL NEEDS,
COMMISSION ON
1999-2000**

S. L. 99-395, Sec. 21B.1

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CHILDREN WITH SPECIAL NEEDS STUDY

S.L. 1999-395, Part XXIB, Sec. 21B

Section 21B.2. There is established the Study Commission on Children With Special Needs. The Commission shall consist of 18 members, appointed as follows:

- (1) Seven persons appointed by the Speaker of the House of Representatives, four of whom shall be members of the House of Representatives, and three of whom shall be public members.
- (2) Seven persons appointed by the President Pro Tempore of the Senate, four of whom shall be members of the Senate, and three of whom shall be public members.
- (3) Four persons appointed by the Governor.

Each appointing authority shall assure insofar as possible that its appointees to the Commission reflect the composition of the North Carolina population with regard to ethnic, racial, age, and gender composition.

Section 21B.3. The Commission may:

- (1) Pursue an in-depth study of the services provided by other states for children with special needs.
- (2) Collect and evaluate for comprehensiveness existing legislation in North Carolina that is relevant to programs for children with special needs, and pertinent reports, studies and findings from other states and national bodies.
- (3) Collect and evaluate for comprehensiveness the reports and recommendations of the various agencies, councils, commissions, committees, and associations existing in North Carolina whose primary or partial duties are to make recommendations designed to affect services for children with special needs.
- (4) Evaluate the progress of the State in meeting the service requirements for children with special needs.

In addition, the Commission shall study issues related to meeting the educational needs of children with special needs, particularly the alternative funding methods and the effects of the current twelve and one-half percent (12.5%) cap on funding for the education of children with special needs.

Section 21B.4. The Commission may make an interim report to the 1999 General Assembly, Regular Session 2000, upon its convening and shall make its final report to the 2001 General Assembly upon its convening, and to the Governor. Upon submitting its final report, the Commission shall expire.

Section 21B.5. Upon approval of the Legislative Services Commission, the Legislative Services Officer shall assign appropriate professional staff from the Legislative Services Office of the General Assembly to assist with the study. The House of Representatives' and the Senate's Supervisors of Clerks shall assign clerical staff to the Commission, upon the direction of the Legislative Services Commission. The Commission may meet in the Legislative Building or the

Legislative Office Building upon the approval of the Legislative Services Commission.

Section 21B.6. The Speaker of the House of Representatives and the President Pro Tempore of the Senate shall each designate a cochair of the Commission. The Commission shall meet upon the call of the cochairs. A quorum of the Commission is 10 members. While in the discharge of its official duties, the Commission has the powers of a joint committee under G.S. 120-19 and G.S. 120-19.1. Members of the Commission shall receive per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1, 138-5, or 138-6, as appropriate.

Section 21B.7. From funds appropriated to the General Assembly, the Legislative Services Commission shall allocate funds for the expenses of the Study Commission on Children With Special Needs.

EXCEPTIONAL CHILDREN HEAD COUNT

S.L. 2000-67, Section 8.4

Section 8.4. The Commission on Children with Special Needs shall study the issue of when the head count of children with special needs should be performed and whether a single head count during a school year is adequate. The Commission shall report the results of its study to the 2001 General Assembly.

COMMITTEE PROCEEDINGS

The Commission on Children with Special Needs met five times. Following is an agenda and brief description of each meeting.

AGENDA

COMMISSION ON CHILDREN WITH SPECIAL NEEDS

Room 421, Legislative Office Building

Monday, March 27, 2000, 10:00-1:00

❖ **Welcome, Introductions, Clarification of Today's Focus**

Senator Dannelly, Presiding

❖ **Review Authorizing Legislation**

Dr. Shirley Iorio, Education Specialist

❖ **Adopt Budget**

Dr. Shirley Iorio, Education Specialist

❖ **Overview of Special Education Services in the State**

Lowell Harris, Director, Exceptional Children, DPI

- Federal Update – relationship of State law to Federal law
- History of Special Education Services in NC
- Public Schools - How are children identified? What kind of information is given to parents? What is the number of children in each category, by race and gender?

Fay Agar, Superintendent, Division of Early Intervention and Education, DHHS

Dr. Jane Young, Director, Educational Services, Division of Prisons, NC Department of Corrections

❖ **What isn't working?**

Lowell Harris, Director, Exceptional Children, DPI

- Shortage of Special Education teachers
- Office of Civil Rights investigations – What are the issues?

Allison Schafer, General Counsel/Director of Policy, NC School Boards Association

Butch Elkins, Lead Attorney, Governor's Advocacy Council for Persons with Disabilities

Ellen Russell, Chair, NC Special Needs Federation

Monday, March 27, 2000

Overview of Special Education Services in the State

Mr. Lowell Harris, Director of Exceptional Children, Department of Public Instruction (DPI), stated that the education of Exceptional Children has had a long history in North Carolina. Exceptional Children are those who deviate from what is considered average or normal in physical, mental, emotional or social characteristics to such an extent that they require special educational services in order to develop to their potential and succeed in school.

In 1974 the federal government passed Public Law 94-142. This federal law required State special education laws to be in compliance with it. In 1990, P.L. 94-142 was amended and became IDEA, the Individuals with Disabilities Education Act. States must comply with IDEA in order to receive federal funding.

G.S. 115C, Article 9, is the applicable state law for special education. The State Board of Education and the Department of Public Instruction prepare a Procedure Manual, a Question and Answer Manual, and a Handbook on Parents' Rights. The State compiles a Headcount Summary in April and again in December to meet the federal headcount requirement. Mr. Harris indicated that the laws are individualized by each state.

Fay Agar, Superintendent, Division of Early Intervention and Education, Department of Health and Human Services (DHHS), provided a report on the services of her division. She reviewed the types of services they currently provide. For example, Project Leap allows for the screening of infants for hearing loss before they leave the hospital. Prior to Project Leap it could take up to two years to test a child's hearing.

There was discussion about the time it takes for a student to go through the assessment by the Department of Exceptional Children (DEC), and the collaboration of the DEC and school in the evaluation. Ms. Agar stated that there is an upcoming audit of Division of Services for the Deaf and Hard of Hearing in early April. This review will document the need for change and will serve as a blueprint.

Dr. Jane Young, Director of Educational Services, Division of Prisons, NC Department of Corrections, highlighted the initiatives of educational services of the NC Division of Prisons. The division has over 70 prisons and 32,000 inmates. Three thousand of those inmates are under 21 years of age. Fifty-three Community Colleges provide educational programs to inmates. Programs are designed to prepare inmates for gainful employment upon their release from prison. All inmates under the age of 21 are screened for their possible need for special education. School records are requested and reviewed in the evaluation of students. The Division is not responsible for detention centers.

Dr. Young explained that the goal of the Division is for the inmates to get a GED. She also stated that counseling is offered to those inmates over the age of 21 and that they are encouraged to participate. Dr. Young further explained that 100 teachers are licensed by DPI at youth facilities and are paid by the Department of Corrections. Instructors who

provide GED & vocational courses are paid by the Community Colleges. The Community College provides the majority of services for the inmates.

What Isn't Working?

Mr. Harris noted that North Carolina needs a better vision of what our children can do. There are still schools where children are segregated. There must be a culture of inclusion. Schools need more funding, but must also measure results and be accountable. There are many areas for concern: Too many children are referred to special education; too many young people leave school without a diploma or certificate; colleges and universities are not preparing our teachers; more minority teachers are needed in special education; agencies are not working together; parents should have early support and be told the truth; and testing should be done appropriately. In the personnel area, Mr. Harris noted that there is a shortage of qualified personnel, and a turnover rate of 13% per year.

Allison Schafer, General Counsel/Director of Policy, NC School Boards Association, stated that our focus must be to serve all students. She also noted problems in the areas of staffing, qualified teachers, paperwork, extra duties, the need for different pay for special education teachers, discipline, adequate support, and the funding cap issue.

Butch Elkins, Lead Attorney, Governor's Advocacy Council for Persons with Disabilities, stated that the most pressing need centered on the statute of limitations. Currently contested case hearings must be done in 60 days. Sixty days is not a reasonable time period. He stated that the time frame should be at least comparable to the disability and employment hearing statute, which is 180 days. He felt one year was a reasonable time frame. He also cited the IEP implementation as a problem. This can begin the adversarial relationship with the school and parents

Ellen Russell, Chair, NC Special Needs Federation, stated that the ABC's are hurting students. Students are being excluded from tests. She also cited the following problem areas: Literacy of children with special needs (35% are not at grade level, and 60% of adults who have learning disabilities cannot read); discipline (students are too frequently suspended or expelled); funding; and inadequate training of teachers.

AGENDA
COMMISSION ON CHILDREN WITH SPECIAL NEEDS

Room 421, Legislative Office Building
Tuesday, April 25, 2000, 10:00-1:00

- ❖ **Welcome**
Representative Boyd-McIntyre, Presiding
- ❖ **Approve Minutes**
Representative Boyd-McIntyre
- ❖ **Follow-Up questions from March 27 meeting**
Lowell Harris, Director, Exceptional Children, DPI
- ❖ **Background-Previous Studies**
Dr. Shirley Iorio, Education Specialist
- ❖ **Funding for Special Education**
Philip Price, Fiscal Analyst, NCGA Fiscal Research Division
- ❖ **Effects of the 12.5% cap**
Lowell Harris, Director, Exceptional Children, DPI

Allison Schafer, Legal Counsel/Director of Policy, NC School Boards Assn.

Ellen Russell, Chair, NC Special Needs Federation

Robert Sturey, Director of Exceptional Children, Guilford County Schools, and
President of the NC Council of Administrators of Special Education (CASE)

Tuesday, April 25, 2000

Mr. Lowell Harris, Director of Exceptional Children, Department of Public Instruction (DPI), presented some information that had been requested at the March 27 meeting. He compared the special education laws for several southeastern states with those of North Carolina.

Mr. Harris also explained that there is no official way to rank individual schools in terms of their effectiveness with children with special needs. North Carolina does look at progress with the help of the ABC system, and all school systems are monitored and audited. DPI helps schools develop a corrective action plan, if one is needed. Data from the state-testing program is used to determine how well the school is doing. Special education information will also be included in the Governor's First in America report card.

Mr. Harris presented historical information about the Head Count over the past seven to ten years

Dr. Shirley Iorio, Education Specialist, reviewed the recommendations from the 1991 report by Dr. Richard Clifford, and the 1993 report by J. Frederick West, Ph.D.

Dr. Iorio also shared with the commission information from the National Center for Education Statistics. The Center for Special Education Finance along with the US Department of Education Office of Special Programs will conduct a comprehensive study of all special education expenditures, and that report will be available in December of 2001.

Mr. Philip Price, Fiscal Analyst, NCGA Fiscal Research Division, presented information about funding for special education. Mr. Price explained that the State funds education through position allotments, dollar allotments, and categorical allotments.

Mr. Lowell Harris, DPI, Allison Schafer, NC School Boards Association, Ellen Russell, NC Special Needs Federation, and Robert Sturey, Guilford County Schools, presented their position on the effects of the 12.5% funding cap. They reminded the Commission that school systems are required by law to provide an appropriate education to all of its children with disabilities, not just 12.5%. Currently, there are 69 school districts in North Carolina over the cap.

AGENDA
COMMISSION ON CHILDREN WITH SPECIAL NEEDS

Room 421, Legislative Office Building
Monday, September 18, 2000, 10:00 - 12:00

- ❖ **Welcome**
Representative Boyd-McIntyre, Presiding

- ❖ **Approve Minutes**
Representative Boyd-McIntyre

- ❖ **Announce Future Meeting Dates**
Representative Boyd-McIntyre
November 20, 2000
January 8, 2001

- ❖ **Recent Legislation**
Dr. Shirley Iorio, Education Specialist

- ❖ **Follow-Up from Previous Studies**
Dr. Shirley Iorio, Education Specialist
Philip Price, Fiscal Analyst, NCGA Fiscal Research
Lowell Harris, DPI

- ❖ **Federal Law Impact on Funding**
Robin Johnson, Committee Counsel

Monday, September 18, 2000

Dr. Iorio presented recent legislation from the 2000 Short Session that affected children with special needs. She explained that there is a part of the Studies Bill (SB 787), passed in the 2000 Short Session, which allows the Legislative Research Commission to study the placement of and to provide special education to children in group homes. There are also special provisions in the Budget Bill (HB1840) for a funding increase of \$5 million for special education, and for the Commission on Children with Special Needs to study whether a single head count during a school year is adequate.

Another special provision of the Budget Bill directs the State Board of Education to study the connection between the identification of minority and at-risk students as students with behavioral or emotional disabilities in order to determine if there is indeed a relationship between those factors and the gap in student achievement. The Board will also examine the criteria used to determine whether a student has a behavioral or emotional disability and requires special education.

The State Board is also directed to study the under-representation of minority and at-risk students in honors classes, advanced placement classes, and academically gifted programs, and its impact on Special Education. In particular, the Board will examine the criteria used to identify whether a student is eligible for one of these classes or programs.

At the 25 April 2000 meeting of the Commission on Children with Special Needs, the Commission reviewed recommendations made in the reports of Dr. Richard Clifford (1991) and Dr. J. Frederick West (1993). Dr. Iorio reviewed each of these recommendations to determine if any had indeed been implemented.

The Chair recognized Robin Johnson to discuss *Federal Law Impact on Funding*. Ms. Johnson explained that, over the past 10-20 years, things have happened on the federal level that have had an impact on the use of funds in schools systems. There are lists at both the federal and state level of categories for children that are considered disabled. Examples of these categories are learning disabled, mentally handicapped, blind, etc. Also, the definition of other health impaired has been expanded. The most significant change to that category was that ADD and ADHD children could now be included in the other health-impaired category, and as a result can qualify, if needed, for special education. This is one of the things that has had an impact on how dollars have to be spent.

Ms. Johnson noted that most of the changes made happened in 1997 when IDEA was re-authorized. Prior to 1997 there was quite a debate as to whether ADD and ADHD children were really disabled

Lowell Harris, DPI, further clarified a portion of Ms. Johnson's presentation by reiterating that public schools are only required by law to *identify* students in private

schools who may need special education services. However, *servicing* children with special needs is required only within the public school system. The law requires that only a “proportionate amount” of federal money be spent on those students in need of special services in private schools/home settings.

Mr. Harris went on to discuss the function of Out of District Placement Funds. These funds are provided so that a school system or LEA that is unable to provide the special education needed by a particular student can use these funds to send a student to a school which will meet their needs. This could be a private school, or a neighboring county school, in-state or out-of-state. This is state money although federal money is tied into it from time to time.

AGENDA
COMMISSION ON CHILDREN WITH SPECIAL NEEDS
Room 421, Legislative Office Building
November 9, 2000, 9:00-12:30

- ❖ **Welcome and Introductions**
Representative Boyd-McIntyre, Presiding
Senator Dannelly
- ❖ **Approve Minutes**
Representative Boyd-McIntyre
- ❖ **ABCs and Testing**
Lowell Harris, Director, Exceptional Children, NC Department of Public Instruction
Lou Fabrizio, Director, Accountability, NC Department of Public Instruction
- ❖ **Head Count - When?, How many in a year?**
Authorizing Legislation, Dr. Shirley Iorio, Education Specialist
Lowell Harris, Director, Exceptional Children, NC Department of Public Instruction
- ❖ **Concerns and Comments**
Robin Allen, Coordinator, Special Needs Federation
- ❖ **Research Regarding Education of NC Children with Special Needs**
Mike McLaughlin, Editor, North Carolina Insight Magazine
North Carolina Center for Public Policy Research
- ❖ **Committee Discussion**

Next meeting - January 8, 2001, 10 am -12 pm

November 9, 2000

The Commission heard a presentation on the ABCs and testing program for the public schools of North Carolina. Lowell Harris, Director, Exceptional Children, Department of Public Instruction, began the presentation with an explanation of the Individuals with Disabilities Act's (IDEA) requirement that beginning July 1, 2000, students with disabilities must be included in the general state assessment program. Since not all students will be able to participate in regular testing even with modifications, some additional accommodations will need to be made in order to evaluate the progress of students with disabilities. Lou Fabrizio, Director, Accountability, Department of Public Instruction, outlined the actions the Department of Public Instruction has taken to meet these requirements. The Department will offer, in addition to the regular state test, a computerized adaptive test developed by the Research Triangle Institute, an alternate assessment portfolio, and a checklist.

According to Mr. Fabrizio, the biggest challenge is how to successfully take the results of the various acceptable testing methods and successfully merge them into the ABC statewide accountability program without resentment. When the ABCs began, there was no legislation requiring the inclusion of all students in the accountability program. Critics of the current mandate are concerned that including the scores of students with disabilities could preclude schools once noted for their superior test scores from being recognized as such. Mr. Fabrizio stated that extensive public relations efforts must be made to smooth the transition.

The Commission was required by legislation to study the issue of a head count, specifically, when it should be done, and how many times during a year. Currently in North Carolina, the head count is done twice a year: December 1 (Federal requirement) and April 1 (State requirement). The Commission agreed that the December 1 date could not be changed because it is a federal requirement, but that it excludes students with disabilities who may enter the school system after that date. Therefore, using just the December 1 date is not a good option. The April 1 head count was implemented to better determine the number of students with disabilities for more accurate funding considerations.

Mr. Harris reported that a survey done in North Carolina school systems revealed that the school systems would prefer to have one head count only if two conditions were met: a guarantee that the school system would not lose any funding, and that there would be a reduction in paperwork. Mr. Harris suggested that an option might be to look at the average increase of students with disabilities over a 3-5 year period, and then build that increase into the continuation budget. He also suggested that a second option is to leave the head count at twice per year.

The Commission heard comments from Robin Allen, coordinator, Special Needs Federation; Mike McLaughlin, Editor, North Carolina Insight Magazine; and Pat Lillie, a representative from the Learning Disabilities Association of North Carolina.

AGENDA
COMMISSION ON CHILDREN WITH SPECIAL NEEDS
Room 421, Legislative Office Building
January 8, 2001, 10:00 – 12:00

- ❖ **Welcome**
Representative Boyd-McIntyre
Senator Dannelly

- ❖ **Approve Minutes**
Representative Boyd-McIntyre
Senator Dannelly

- ❖ **Discussion of Commission Recommendations**

January 8, 2001

The Commission met to discuss their recommendations and proposed legislation. The members accepted the report to be submitted to the 2001 General Assembly and the Governor.

Commission Recommendations

1. Enact the Legislative Proposal (Meeting the Needs of Students with Disabilities), which would do the following:

Section 1: Authorize the Commission on Students with Disabilities to study these issues:

- a. The numbers of students receiving or needing services and the cost of educating students in state residential institutions compared to community-based programs.
- b. The effect of testing students with disabilities for accountability purposes versus the federal mandate for inclusion of these students in testing.
- c. The effect of the possible tension between the State's preference for safe schools and the federal preference for keeping students with disabilities in school if the discipline problem is related to their disability.
- d. The extent to which the frequency of expulsion or suspension of students with disabilities has increased in the past five years, and the extent to whether there is an increase of these disciplinary actions around the time of year when end-of-grade or end-of-course tests are administered.
- e. The financial cost of increasing the current funding cap of 12.5% to 13% or 13.5%.
- f. Determination of whether special education services are being distributed equitably Statewide (spending between rural and urban schools, rich and poor school districts).
- g. Determination of whether the State Board of Education has a neutral and clear appeal process for the exit exam, and how that process is working for students with disabilities.
- h. Determination of whether the State Board of Education has made the alternative assessment portfolio available to all students whose Individual Education Plan (IEP) or Section 504 Plan documents the need.
- i. The severity of the problems with training, recruiting, and retaining special education teachers.
- j. The State law regarding time limits in resolving disputes involving the educational placement of students with disabilities.
- k. Any other issue the Commission determines is appropriate.

Sections 2 and 3: Direct the State Board of Education to disaggregate the scores of students with disabilities and include them in the ABCs school results.

Section 4: Require the State Board of Education (SBE) to post on its website information regarding the education of students with disabilities. This web page shall include information about the ABCs, testing procedures, testing results, accommodations, complaint procedures, and procedures regarding reviews. The web page shall be easily accessible to parents and updated as often as necessary to keep the information current.

Section 5: Direct the State Board of Education to collect information that documents how LEAs are funding the provision of special education to more students with disabilities than are covered by the State funding cap of 12.5%.

2. The Commission recommends that the General Assembly, over the next five years, increases the funding for students with disabilities to 2.3 times the cost of educating a “regular” student.

3. The Commission recommends that the Department of Public Instruction, Exceptional Children’s Division, keep the current head count system.